FARAD CONTINUATION SHEET.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR.

CIVIL APPLICATION NO.7599/2005 IN

M.C.A. St. (Restoration) No.20062/05

Office Notes, office Memoranda of Coram appearances, Court's orders or directions and Registrar's order.	Court's or Judge's order

CORAM: **B.P.DHARMADHIKARI, J.**
DATED : **10.01.2006.**

1. Heard Advocate Mrs. Jawalkar for petitioner-applicant, Advocate Shri Nistane for respondent no.1 and learned A.G.P. for respondent nos.2 and 3.

2. The civil application is for condonation of delay of 25 days in moving M.C.A. Stamp No.20062/2005. The said M.C.A. stamp number is for restoration of rejected M.C.A. No.471/2005 in which by order dated 26.9.2005 registration has been refused on 11.10.2005. The present applicant had filed writ petition No.2126/1994 and the

said writ petition came to be dismissed for want of prosecution on 4.2.2005.

3. Advocate Mrs. Jawalkar contends that the Advocate who was representing the applicant- petitioner in that matter did not file Vakalatnama and his name therefore was not reflected in the cause list and as such he did not appear and did not argue the matter. She further contends that after knowing about dismissal, M.C.A. No.471/2005 (rejected) was filed through the said Advocate but again in it registration came to be refused for want of removal of office objections. According to her the applicant-petitioner cannot be blamed in the matter. As against this learned Counsel appearing for respondent no.1 contends that there is no fault on the part of respondent no.1-landlady and the landlady is waiting for recovery of possession in view of the orders obtained from the lower courts. According to her the petitioner-applicant was not diligent.

4. Perusal of records and the arguments of both

the learned counsels reveals that the writ petition came to be dismissed in unfortunate circumstances mentioned above, and thereafter though M.C.A. was filed for its restoration, the same was also not attended and came to be dismissed. The applicant-petition who had engaged an Advocate and also filed M.C.A. for restoration of dismissed writ petition therefore cannot be blamed in the matter. However, at the same time prejudice caused to present respondent no.1-landlady on account of delay in the matter can also not be ignored. Hence, the equity between the parties need to be adjusted.

5. The application for condonation of delay of 25 days moved by the present applicant-petitioner is allowed subject to payment of costs of Rs.2,000/- to present respondent no.1 within a period of two weeks from today. If the costs are so paid, the office shall register M.C.A. Stamp No.20062/2005 and after its registration the same shall stand allowed along with M.C.A. No.471/2005 and the order dismissing W.P. No.2126/1994 in default passed

on 4.2.2005 shall stand recalled & W.P. restored back to file. The present applicant-petitioner as also respondent nos.1, 2 and 3 through their respective counsels waive notice of such restored writ petition. If the costs are so paid, the office to proceed further as mentioned above and to list the Writ Petition No.2126/1994 for final hearing before the appropriate Bench after two weeks.

JUDGE

SSW